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October Term, 1949
No. 49

HELEN PARKER, JONE LANE WHEELER, KATHERINE GATES, CORNELIUS WEBSTER, WILLIAM G. COLE, J. L. MARTIN, ROBERT L. McGUIRE, JULLEANA GLISBY, ALICE M. PARSONS, CAROLINE POTTENGER, JOHN R. McCROSKEY, MATTIE A. BELINO, ADA GRUVER, MAJOR WEST, ALICE WALSH, C. H. DEMAREST, BETTY S. SELDEN, MIRIAM LASAROU, RALPH L. DAVIS, WINIFRED McCONNELL, COLUMBUS S. BELL, SHIRLEY GALAT, RUTH THOMASEN, KENT HAMMOND THIES, LAWRENCE LUCKS,

Petitioners,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY and ROGER W. JESSUP, and Each of Them as Members of the Board of Supervisors of Said County; WAYNE ALLEN, as Chief Administrative Officer of Said County; HAROLD W. KENNEDY, as County Counsel of Said County; CHARLES C. MACK, G. H. NEWLAND and T. J. O'KEEFE, and Each of Them, as Members of the Civil Service Commission of Said County; CLIFFORD AMSDEN, as Secretary and Chief Examiner of Said Commission; MICHAEL DONOGHUE, as Registrar of Voters of Said County,

Respondents.

ON CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT OF THE STATE OF CALIFORNIA.

Motion for Leave to File Brief and Brief of the National Lawyers Guild, Los Angeles and Beverly Hills Chapters, as Amicus Curiae.

NATIONAL LAWYERS GUILD, LOS ANGELES AND HOLLYWOOD CHAPTERS.

LOREN MILLER,
129 West Third Street, Los Angeles, California,
Attorney for the Los Angeles and Hollywood-Beverly Hills Chapters, National Lawyers Guild.

JERRY PACHT,
ESTHER SHANDLER,
HUGH GOODWIN,
Of Counsel.

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Respondents.

ON CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT OF THE STATE OF CALIFORNIA.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The Los Angeles and Beverly Hills Chapters of the National Lawyers Guild are organizations of members of the California Bar, devoted to the preservation of the rights of the people guaranteed by the Constitution of the United States.

This case presents issues with respect to the rights of freedom of speech and association which the Chapters believe to be of great importance to the nation. Upon the determination of these issues depends the rights of millions of American citizens. The said Chapters of the National Lawyers Guild conceive it to be their public duty, as bar associations, to bring to this Court the reasons which compel them to conclude that the judgment below should be reversed. Therefore, the Los Angeles and Hollywood-Beverly Hills Chapters of the National Lawyers Guild respectfully request leave to file a brief as *amicus curiae*.

Respectfully submitted,

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LOREN MILLER,

Attorney for the Los Angeles and Hollywood-Beverly Hills Chapters, National Lawyers Guild.

JERRY PACHT,

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HUGH GOODWIN,

Of Counsel.

Thomas Jefferson, too, was concerned over invasions of the liberty of conscience and enforced testimony as to belief. In 1803 he wrote to Benjamin Rush:

> "It behooves every man who values liberty of conscience for himself, to resist invasions of it in the case of others; or their case may, by change of circumstances, become his own. It behooves him, too, in his own case, to give no example of concession, betraying the common right of independent opinion, by answering questions of faith, which the laws have left between God and himself." (*Selected Writings*—Modern Library, 1944, p. 567.)

In 1832, John Quincy Adams, then a member of the United States Congress, stated:

> "It cannot be within the competence of a Committee of the House to institute a general search and compel the citizens on oath to purge themselves if innocent and criminate themselves, if guilty, and bring with them their papers to be ransacked in a roving hunt for unspecified crimes." (23 Congress, 1st Session, Debates, Vol. X, pt. 5, app., p. 194.)

In 1943, when West Virginia sought to compel the flag salute by children whose religion dictated otherwise, the requirement of this oath was stricken down by the Supreme Court, relying on the Fourteenth Amendment (*West Virginia v. Barnette*, 319 U. S. 624). Mr. Justice Murphy, concurring, added:

> "The right of freedom of thought and religion . . . includes both the right to speak freely and the right to refrain from speaking at all."

The Fourth and Fifth Amendments were spawned from history and the courts have taken judicial notice of that history when they have construed both of these amendments broadly.

> "So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law; so that a maxim which in England was a mere rule of evidence became clothed in this country with the impregnability of a constitutional amendment." (*Brown v. Walker,* 161 U. S. 591.)

> "It would not be possible to add to the emphasis with which the framers of our Constitution and this court (in *Boyd v. United States,* 116 U. S. 616, in *Weeks v. United States,* 232 U. S. 383, and in *Silverthorne Lumber Co. v. United States,* 251 U. S. 385) have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two amendments. The effect of the decisions cited is: That such rights are declared to be indispensable to the full enjoyment of personal security, personal liberty, and private property; that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as the guaranties to the other fundamental rights of the individual citizen;—the right to trial by jury, to the writ of habeas corpus, and to due process of law. It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts, or

by well-intentioned but mistakenly over-zealous executive officers." (*Gouled v. United States* (1920), 255 U. S. 298, 303; Clarke, J.)

The investigation into the political, economic and social beliefs and associations of an individual is clearly prohibited by the First Amendment.

> "The freedom and liberty to express ourselves privately and to hold private assemblies for lawful purposes and in a lawful manner is protected as much by the First Amendment as the right to do so publicly. Limitation in this regard would be such a serious encroachment upon our liberties and freedom as to render the pre-eminent rights guaranteed by the First Amendment nugatory in large areas of legitimate action." (*Local 309 UFWA (CIO) v. Gates, Governor of Indiana*, 75 Fed. Supp. 620.)

The system of the secret ballot was devised to the end that a person could hold his political beliefs to himself inviolate and free from possible penalty and stigma. Today, the right is recognized as indispensable to the functioning of a democracy.

> "The object of this requirement was to secure the entire independence of the electors, to enable them to vote according to their own individual convictions of right and duty without the fear of giving offense or exciting the hostility of others." (*People v. Cicott*, 16 Mich. 283.)

The propositions that a governmental agency can test its employees for what officials think is political heresy is untenable under the guaranties of the First Amendment, and that such officials may be allowed to obtain this information by compulsory confession, is likewise untenable under the guaranties of the Fourth and Fifth Amend-

ments. As Mr. Justice Jackson said in the *Barnette* case, *supra:*

> "If there is one fixed star in our Constitutional Constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by ward or act their faith therein." (319 U. S. 624.)

Conclusion.

This Court is called upon by the urgent needs of our democratic traditions to preserve the rights of political belief and association under the First Amendment by refusing to allow governmental power to be used to limit or destroy the exercise of such rights, in derogation of the Fourth and Fifth Amendments.

In these critical days, one can be guided by the words written by Mr. Justice Cardozo in his essay "Liberty and Government" in "The Paradoxes of Legal Science," that:

> "Experimentation there may be in many things of deep concern, but not in setting boundaries to thought; for though freely communicated is the indispensable condition of intelligent experimentation, the one test of its validity."

Respectfully submitted,

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